THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25866 OF 1999

14.03.2006

Between:

Garapati Bharati Devi, W/o.Sadananda Bhaskara Rao

… Petitioner

AND

The Commissioner, Eluru Municipality, Eluru

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25866 OF 1999

ORDER:

The petitioner is allegedly owner of land admeasuring Acs.0.35 (1680 Sq.yards) comprised in R.S.Nos.87/5 and 87/6 situated at Santhinagar, Block-I, Eluru Sub-Division, Eluru Town. She constructed a thatched roof house, which was later converted into a RCC building. She alleges that the respondent No.1 without giving any notice and without publishing any notification changed the alignment of the existing road in the Colony and is trying to dispossess the petitioner for the purpose of laying down the road. According to the petitioner, if the road as per the approved master plan is laid, there would not be any necessity for acquiring the land of the petitioner but the respondent revised the alignment in such a manner that the petitioner's land would affected. Therefore, she filed the present writ petition seeking a writ of Mandamus declaring the revised plan changing the Rule 36 of the Rules framed under Town Planning Act, 1920 and for a further declaration that the

respondents have no right to take possession of the land without due process of law.

Though the writ petition was filed in December 1999 and notices were served, the second respondent has not filed any counter affidavit. The first respondent Municipality has filed a counter affidavit *inter alia* stating that the petitioner constructed the building without obtaining any permission/authorization and that the proposal for realignment of 40' master plan road is under approved stage. The allegation that the respondents are trying to dispossess the petitioner without due process of law is denied.

A reading of the counter affidavit filed by the first respondent would show that the petitioner has approached this Court on mere apprehension that even while the revised plan of realigned road is under approved stage. Therefore, the relief as prayed for cannot be granted. However, this Court observes that if the petitioner's land is likely to be affected by the construction of 40' mater plan road either as per the pre-revised plan or revised plan unless and until proper procedure is followed for acquiring the land of the petitioner, she cannot be dispossessed by coercive action.

The writ petition, with the above observations, is dismissed. No costs.

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(**V.V.S.RAO,J**)

March 14, 2006.

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